



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201016095

*Uniform Issue List: 9100.00-00; 408A.00-00*

JAN 27 2010

SEIT:ER:RA:T2

**Legend:**

Taxpayer A = \*\*\*

Custodian B = \*\*\*

Firm C = \*\*\*

Amount A = \*\*\*

Amount B = \*\*\*

IRA X = \*\*\*

Roth IRA Y = \*\*\*

Year 1 = \*\*\*

Year 2 = \*\*\*

Year 3 = \*\*\*

Dear \*\*\*:

This is in response to your request dated June 29, 2009, as supplemented by correspondence dated November 10, 2009, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained IRA X, a traditional IRA described in section 408 of the Internal Revenue Code (the "Code"), with Custodian B. In Year 1, Taxpayer A transferred

Amount A from IRA X to Roth IRA Y, an IRA described in section 408A of the Code. At the time of the transfer, Taxpayer A anticipated that her gross income would not exceed \$100,000, the limit for establishing a Roth IRA under section 408A. However, year-end dividends and capital gain distributions produced a total adjusted gross income of Amount B, surpassing the section 408A limit. Taxpayer A engaged Firm C to prepare her tax return for Year 1, and provided Firm C with the Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., she received from Custodian B, showing Amount A as a taxable distribution. Taxpayer A relied on Firm C to advise her on all matters related to her tax return. Firm C, however, failed to notice that Taxpayer A's adjusted gross income for Year 1 rendered her ineligible to transfer Amount A to a Roth IRA, and consequently failed to inform Taxpayer A that she needed to elect to recharacterize Amount A as a contribution to a traditional IRA before the deadline for her Year 1 tax return. The error was not discovered until Year 3, when Firm C reviewed Taxpayer A's tax return for Year 2.

Prior to being contacted by Taxpayer A, the Internal Revenue Service (the "Service") had not discovered Taxpayer A's failure to recharacterize the contribution. As of the date of this ruling request, Taxpayer A had not recharacterized Amount A as a contribution to a traditional IRA.

The statute of limitations on Taxpayer A's Year 1 Federal Income Tax Return remains open.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A may be granted a period not to exceed 60 days from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amount A as a contribution to a traditional IRA.

Section 408A(c)(3) of the Code provides, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000.

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

Section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this

recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal Income Tax Return for the year of contribution.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not

grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing her Federal Income Tax Return for the year of contribution, was caused by her reasonable reliance on Firm C and its representatives, who were tax professionals employed by Taxpayer A, and who failed to advise Taxpayer A to make the election. Taxpayer A filed this request before the Service discovered her failure to make a timely election to recharacterize the failed conversion.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (v), for the Year 1 tax year. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer A is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Amount A as a contribution to a traditional IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter  
Notice of Intention to Disclose, Notice 437

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